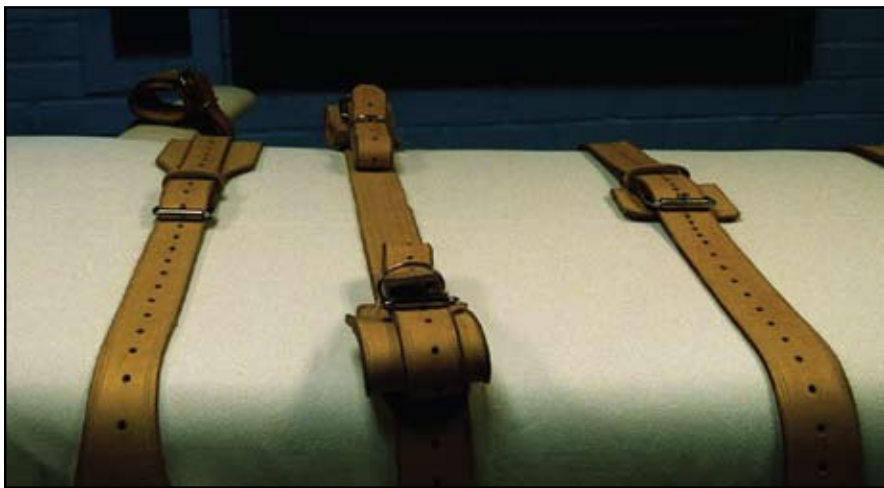


Falsely Accused

Prosecutor, Forensic Experts Take Heat for Mississippi 'Disaster'



Kennedy Brewer and Lavon Brooks are free men today, and now it's the turn of the prosecutor and expert forensic witnesses who convicted them to draw fire.

The Mississippi criminal justice system is on trial, with some activists calling for the review of scores of convictions, and many raising questions about the state's most prolific medical examiner and a fellow controversial forensic expert.

The lapses that led to one man being sentenced to die and another to life for crimes they didn't commit have been called part of a "forensic science disaster" (Balko, 2007). They have provoked action in the Mississippi Legislature (Innocence Project, 2008), and they have inspired a public information request relating to hundreds of autopsy records (Associated Press, 2008).

▲ For 10 years, Kennedy Brewer lived in Mississippi's death row, awaiting an appointment with a lethal execution gurney. He was moved off death row in 2001, after DNA analysis proved that someone else raped the toddler he was convicted of killing. But the DA in the case refused to drop charges and Brewer spent 5 more years in confinement. This year another man, who matched the DNA found on the body and who reportedly confessed to the murder, was arrested in the case. That man is also a suspect in a similar rape and murder that sent convicted Levon Brooks and sent him to prison with a life sentence. Brooks was freed this year after spending 15 years in prison for a crime he didn't commit. The two cases have placed a spotlight on the criminal justice system in Mississippi. MCT PHOTO

Today's headlines have their origin in two brutal killings that were striking for their similarity. Both occurred in the rural and economically disadvantaged Noxubee County in eastern Mississippi—with fewer than 4,500 households and a per capita income of a little more than \$12,000.

In 1990, 3-year-old Courtney Smith was kidnapped, raped, and murdered.

In 1992, 3-year-old Christine Jackson was kidnapped, raped, and murdered.

- The bodies of both little girls were tossed into bodies of water (one in a creek, the other in a pond).
- Forensic experts eventually identified bite marks on both bodies.
- The residences from where the girls were taken were just a few miles apart.

Should those coincidences have been enough to raise suspicions that the killings were linked? Perhaps. But the similarities only continued.

- The same sheriff's officer investigated both killings.

- The same medical examiner conducted the forensic autopsies.
- The same forensic odontologist gave consultations.
- The same prosecutor examined the evidence and filed charges.
- The conclusions reached by the prosecutor in both cases were the same. In each case, the boyfriend of the mother of the slain child was arrested and charged with murder.

Investigators were so confident in the cases against Levon Brooks and Kennedy Brewer that they didn't pay much attention to Justin Albert Johnson, a middle-aged man who had earlier pleaded guilty to assaults against women and young girls, and who happened to live near both murder scenes (Innocence Project, 2008).

Dr. Michael West, the controversial forensic odontologist who once said from the witness stand that he made fewer errors than "my savior, Jesus Christ" (*Newsweek*, 2001), confidently linked what he called human bite marks on the bodies with Brooks and Brewer. Faced with such damning evidence, it wasn't hard for juries to convict Brooks and sentence him to life and to convict Brewer and sentence him to death.

Fortunately, for Brewer, the wheels of capital punishment ground slowly. As he lived for more than a decade on death row in Parchman State Penitentiary, two factors united to shed new light on his case—improvements in forensic technology and increased advocacy for the rights of the falsely accused.

DNA Sheds Light

DNA fingerprinting has been around since the mid-1980s, but in the early 1990s, the methods of the time were not able to analyze the trace evidence in the Brooks and Brewer cases. If it had, the DNA found on the bodies would not have matched the DNA of the accused, which would have likely dealt fatal blows to the prosecution's cases.

With the improvement of DNA technology came a powerful new way to look back and evaluate the results of criminal trials. Armed with that technology, high-powered defense attorneys Barry Scheck and Peter Neufeld formed the Innocence Project with the mission of freeing inmates who could be proved innocent by DNA.

In 2001, a test showed that DNA recovered from Christine Jackson's body did not come from

Brewer (*New York Times*, 2007). Such a finding has produced more than 200 overturned cases across the nation, but it wasn't good enough for Forrest Allgood, the prosecutor. He changed his theory that Brewer had killed the girl in her bedroom and instead hypothesized that Brewer had been an accomplice. "I perceive that Kennedy Brewer assisted someone else in the killing of the child," Allgood told *The New York Times* in 2007. "Whether he actually penetrated that child or not functionally doesn't make any difference if he was aiding, assisting, and encouraging in her death."

Instead of releasing Brewer, Allgood said he would seek a retrial as a capital murder case, which would preclude the possibility of Brewer being able to post bail and get out of prison. The negative DNA test was, however, enough to get Brewer taken off death row, at least temporarily. In March 2006, a former attorney for Brewer joined Allgood's staff, and the prosecutor recused himself from the case. The new prosecutor decided not to seek the death penalty and did not oppose bail, allowing Brewer to be released in 2006 pending trial.

In 2006, *The New York Times* pointed out the similar case in which Brooks was convicted, but Allgood and the original investigator insisted the cases were not related.

In 2007, the Innocence Project had tests performed on blood and hair samples taken from Justin Albert Johnson during the investigation of the Christine Jackson murder. The samples matched DNA taken from both Courtney Smith and Christine Jackson. When confronted by the evidence, Johnson reportedly confessed and was arrested in February of 2008 (*New York Times*, 2008).

In March, Levon Brooks was formally cleared of all charges and released from prison.

Forensic Experts Criticized

The fallout from the Brewer and Brooks cases has been significant, especially for the medical examiner, Dr. Steven Hayne, and the forensic odontologist, Dr. Michael West, who participated in both autopsies and whose testimony was key to the convictions.

Hayne attended medical school at Brown University and completed his medical internship in 1976 at the Letterman Army Medical Center in San Francisco. He served as Mississippi's interim state medical examiner from 1987 to 1988, but he was forced to step down because he was not certified in forensic pathology by the American Board of Pathology, as required by state law. Hayne has also served as medical director of the Rankin Medical Center and as director of the Renal Lab.

Hayne continues to perform thousands of forensic autopsies a year for Mississippi, a fact that has drawn fire from some critics. Hayne has testified to performing more than 1,500 autopsies a year, well in excess of the 250 autopsies recommended as a limit by the National Association of Medical Examiners (Balko, 2007).

Critics also charge that Hayne has a relationship that is too close to prosecutors and has offered controversial opinions, such as his contention that autopsy results suggested that two people had participated in firing the fatal shot in a murder case (Balko, 2006).

West is even more controversial. He has been the target of investigative reports by *60 Minutes* and ABC News. The *Clarion-Ledger* newspaper of Jackson, Mississippi, reported in February that West resigned from the American Academy of Forensic Science in 1994 when the organization began an ethics investigation against him because of some of his testimony (Clarion Ledger, 2008).

West uses a technique he calls the "West Phenomenon" to analyze suspected bite marks through use of iridescent light and yellow goggles. The technique can't be photographed, he says, nor can it be reproduced by other forensic experts (Balko, 2007).

Reform in Mississippi

The Mississippi Senate recently passed a law to create a DNA evidence task force, and the bill was sent to the House. The Innocence Project calls the law "a critical step forward for Mississippi—one of just eight states in the nation that does not have a law granting post-conviction DNA testing" (Innocence Project, 2008).

The Innocence Project has sent letters to the Mississippi crime lab director and the 22 state district attorneys seeking documents related to Hayne, including official reports on autopsies he conducted and crime lab time logs that would detail his presence during examinations. However, District Attorney Ben Creekmore told the Associated Press that he won't comply with the request because of Open Records Law provisions prohibiting the release of documents that contain personal information about victims.

In an editorial published in March, the *Clarion-Ledger* called for several reforms, including:

- Fully staffing and equipping a more modern state crime lab with greater DNA testing capabilities.
- Hiring a full-time state medical examiner.
- Improving forensic training and investigation statewide.

The ACFEI's Position

The American College of Forensic Examiners Institute supports reform efforts that raise the standards of the forensic science profession and make wrongful convictions less likely.

The ACFEI works to educate and raise standards through such certifications as Certified Forensic Consultant (CFC), Certified Medical Investigator (CMI), Certified Forensic Nurse (CFN), and Certified Forensic Accountant (Cr.FA).

The ACFEI calls on Mississippi officials to fully examine the recent cases in Mississippi and analyze where standards should be raised relating to prosecution of cases and investigations relating to forensic science.

The *Clarion-Ledger's* call for greater funding of forensic testing, including improved crime labs, a full-time state medical examiner, and improving forensic training and investigation statewide should be heeded.

References

- Balko, R. (2007, November). CSI: Mississippi. *ReasonOnline*, Retrieved March 6, 2008, from <http://www.reason.com/news/printer/122458.htm>
- Byrd, S. (2008, March 6). Mississippi autopsies being questioned. *Associated Press*, Retrieved March 6, 2008, from <http://ap.google.com/article/ALeqM5g7RUmW-yf4TNm8IrnMGHrHvCkZQwwD8V7JIL80>
- Clarion-Ledger*. (2008, March 17). Innocence: Miss. crime scene prowess lacking. *ClarionLedger.com*, Retrieved March 18, 2008, from <http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20080317/OPINION01/803170316/1007>
- Clarion-Ledger*. (2008, March 17). Bite-mark expert's findings scrutinized. *ClarionLedger.com*, Retrieved March 18, 2008, from <http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20080217/NEWS/802170380/1002>
- Dewan, S. (2007, September 6). Despite DNA test, a case is retried. *NYTimes.com*, Retrieved March 18, 2008, from [http://www.nytimes.com/glogin?URI=http://www.nytimes.com/2007/09/06/us/06dna.html&OQ=rQ3D1&OP=2eeec972Q2Fg8EDgiQ25&f6Q25Q25qQ7BgQ7BMM1gM2gMbgQ51fgMbiLYs\(qra](http://www.nytimes.com/glogin?URI=http://www.nytimes.com/2007/09/06/us/06dna.html&OQ=rQ3D1&OP=2eeec972Q2Fg8EDgiQ25&f6Q25Q25qQ7BgQ7BMM1gM2gMbgQ51fgMbiLYs(qra)
- Dewan, S. (2008, February 8). New suspect is arrested in 2 Mississippi killings. *NYTimes.com*, Retrieved March 18, 2008, from <http://www.nytimes.com/2008/02/08/us/08dna.html?ei=5088&cen=310c8850d1d4f8de&cx=1360126800&partner=rssnyt&cenc=rss&pagewanted=print>
- Franescani, C., & Baram, M. (2008, Feb. 20). Did 'bite mark' expert fabricate evidence?. *ABCNews.go.com*, Retrieved March 18, 2008, from <http://abcnews.go.com/TheLaw/story?id=4311309>
- Innocence Project. (2008). Levon Brooks exonerated in Mississippi, forensic reforms underway. *InnocenceProject.org*, Retrieved March 18, 2008, from <http://www.innocenceproject.org/Content/1207.php>
- Newsweek*. (2001, August 1). A dentist takes the stand. *Newsweek.com*, Retrieved March 18, 2008, from http://www.accessmylibrary.com/coms2/summary_0286-27083779_ITM